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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,082	08/09/2005	Jean-Pierre Moy	62843(4590-358)	2893
33308 7590 09/04/2008 LOWE HAUPTMAN & BERNER, LLP 1700 DIAGONAL ROAD, SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER				
PEACE, RHONDA S				
ART UNIT		PAPER NUMBER		
2874				
MAIL DATE		DELIVERY MODE		
09/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/518,082

Applicant(s)

MOY ET AL.

Examiner

Rhonda S. Peace

Art Unit

2874

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-6, 10-16 and 18.
Claim(s) objected to: _____.
Claim(s) rejected: 7-9 and 17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michelle R. Connelly-Cushwa/
Primary Patent Examiner, AU 2874

/Rhonda S. Peace/
Examiner, Art Unit 2874

In the arguments submitted 8/21/2008, Applicant argues Hehlen et al fails to disclose the limitations of claim 7, specifically the recitation, "the component is positioned on the first plane face." Applicant argues Hehlen et al merely suggests the isolator element is placed within a trench having sidewalls that are perpendicular to the substrate's upper surface, causing the isolator element to be orientated orthogonally with respect to the substrate plane. Moreover, and as argued by Applicant, Hehlen et al does not teach positioning the isolator element directly on the sidewalls. Therefore, in the opinion of the Applicant, the rejection of claims 7-9 and 17 in view of Hehlen et al is improper. The Examiner disagrees.

Claim 7 does not require the component to be directly positioned on the first plane face, as suggested by Applicant. The recitation "positioned on," and the recitation "positioned directly on" have differing scopes, wherein the recitation "positioned on" is met by an first element positioned on a second element, even in the event of an intermediate layer between the first and second element, such as an epoxy layer used to fix the first element to the second element. Whereas the recitation "positioned directly on" is significantly more narrow and requires the first element to be placed on the second element without any intermediate layer, such that the first element and the second element are directly abutting.

Moreover, Hehlen et al discloses the trench 114 is formed such that the trench width, T_{tr} is equal to or slightly larger than the isolator element width, T_{iso} . See Figure 3, and col. 7 lines 15-20. Therefore, it is clear that Hehlen et al teaches the isolator element is positioned on the first end face, with a thin intervening layer of epoxy to fix the element within the trench. Note, Hehlen et al also does not require the use of epoxy (see col. 8 lines 1-2), and therefore Hehlen et al discloses the embodiment wherein the trench width is equal to the element width, thereby causing the element to be directly positioned on either waveguide's end face.

It is clear from the discussion of Hehlen et al with regards to waveguide formation and the provided Figures, that the waveguides are intended to be formed parallel to the surface of the substrate, thereby resulting in the isolator element being positioned perpendicular to the waveguide's longitudinal axis. However, Hehlen et al also discloses the isolator element may be inserted into the trench at a slight angle. See col. 7 lines 38-42. Therefore, in the event that the waveguides are not formed perfectly parallel to the upper surface of the substrate, and instead the waveguides are formed at a slight angle with respect to the upper surface of the substrate, Hehlen et al nonetheless discloses an embodiment wherein the isolator element is placed perpendicular to the longitudinal axis of the waveguide.